granting it. The material requirement in section 8 (d) is that :—

> the premises are **reasonably required** by the landlord for occupation as a residence for himself, or for his own business trade or professional purposes.

The argument on this ground of appeal turned up on the words "reasonably required". The facts are that the appellant is a tenant of the premises and using them as a dwelling-house. The respondent landlord does not require the premises as a dwelling-house but as business premises. He is also the landlord of other premises at 2 Raffles Place which are now let and being used as business premises. Mr. C. J. Koh contends that it is unreasonable to turn the appellant out of his dwelling-house when the respondent could equally well seek an order for possession of 2 Raffles Place where only business or professional occupants would be affected. But the respondent by his evidence satisfied the learned District Judge that these premises are reasonably required by him for his own business purposes. Thereby he satisfied the requirement of the section. And while I am not prepared to say that a consideration of the matter urged by Mr. C. J. Koh may not have been relevant to the issue I can see nothing in the section which requires a landlord who has two sets of premises, one being used as a dwelling-house and the other being used as business premises, to seek an order for possession of the premises which are being used as business premises rather than an order for possession of the premises which are being used as a dwelling-house.

Ground (e) reads as follows :—

> The learned District Judge did not take into consideration the fact that the Increase of Rent (Restriction) Ordinance, 1939, was repealed and replaced by the Control of Rent Ordinance, 1947.

These proceedings were started when the Increase of Rent (Restriction) Ordinance, 1939, was still law. On the 16th September, 1947 when the case came on for trial, that Ordinance had been repealed by the Control of Rent Ordinance, 1947. Mr. C. J. Koh contends that the learned District Judge should have disregarded the provisions of section 8 (e) of the 1939 Ordinance (which was then repealed) and should have applied the provisions of section 14 of the 1947 Ordinance (which was then in force). In my opinion section 5 (d) (iv) of the Interpretation Ordinance supplies the answer to that contention. By that enactment the repeal does not affect any legal proceeding in respect of any right or remedy incurred under the repealed Ordinance. Mr. C. J. Koh contends that the respondent incurred no right until the date of the judgment on the 16th of September. But I think the true position is that the respondent always had his common law right to recover possession, which right he was prevented from enforcing by the 1939 Ordinance unless he could show that under section 8 (d) of that Ordinance he reasonably required the premises for himself. To that end he instituted these proceedings when that Ordinance was still law; and section 5 (d) (iv) of the Interpretation Ordinance allowed this legal proceeding to be continued as if the repealing Ordinance had not been passed. I may add that it does not appear from the record that this point was ever taken in the Court below, and the learned District Judge expressly says in his Grounds of Decision that "this action having been begun on the 7th August it was not suggested that the law applicable was other than that existing on that date". Mr. C. J. Koh assured me that he did take the point in the Court below, and I thought it right to allow him to argue it on this appeal.

The appeal is dismissed with costs.

Appeal Dismissed.

ALLIED COMPANY v. NETHERLANDS INDIES GOVERNMENT.

[App. Civil Juris. (Murray-Aynsley C.J., Singapore, Willan C.J., Malayan Union and Jobling, J.) December 5, 1947]

Procedure — Suit in the name of Netherlands Indies Government — Whether monarchical state must sue in name of monarch.

This was an application to set aside a writ which was issued in the name of the Netherlands Indies Government. It was argued that the Netherlands Indies Government was not a legal entity and was therefore not competent to sue in the High Court of the Colony of Singapore.

Held, (1) that the evidence in this case showed that the Plaintiff was a juristic person by the law of the Netherlands Indies and that the plaintiff was the person who was designed to sue by the law of the Netherlands Indies and therefore the Plaintiff was the person competent to sue and the person who should sue.

Cases referred to :—

(1) *Yzquierdo v. Clydebank Engineering and Shipbuilding Company* (1902) A.C. 524.

(2) *Columbia Government v. Rothschild* 57, E.R. 514.

(3) *United States of America v. Wagner* (1867) 2 L.R. Ch. App. Cases 582.

Appeal from decision in *Netherlands Indies Government v. Allied Company* (1947) M.L.J. 20. The Court of Appeal consisting of Murray-Aynsley C. J. Singapore, Willan

C. J. Malayan Union, Jobling J. dissenting, dismissed the appeal.

APPEAL TO COURT OF APPEAL.

K. E. W. Hatchard for for Appellants.

G. M. Coltart for the Defendants.

Murray-Aynsley, C. J. : — This is an application to set aside a writ.

The grounds on which this is sought to be done are set out in the summons. Of these 1, 2 and 3 are now material. At the outset it is well to remember that this is an application to set aside a writ and has nothing to do with the merits.

Prima facie if a person, natural or juristic, issues a writ disclosing a known cause of action, that is sufficient. The cause of action here is for the recovery of certain property alleged to be the property of the plaintiff. Is the plaintiff a person? On this all the evidence is that the plaintiff is a juristic person by the law of the Netherlands Indies. This is unequivocally set out in the affidavit of Jonkheer Elias.

It is, however, argued that in the case of a monarchical state proceedings must be taken in the name of the monarch. This theory seems to be exploded by the case of *Yzquierdo v. Clydebank Engineering and Shipbuliding Company*[1] especially the judgment of Lord Robertson. It is true that this was an action for contract, but, in my opinion, that reasoning would also apply to an action for tort.

The person who should sue is the person who is designated to do so by the law of the particular state.

I distinguish the case of *Columbia Government v. Rothschild*[1] as explained in *U. S. A. v. Wagner*[3] on the ground that in the former case the Columbia Government was not a juristic person.

A suggestion was made that the defendants might be exposed to further proceedings by some other party. I think that that is disposed of in paragraph 14 of Jonkheer Elias's affidavit "the use of any other name in such suits would be contrary to the law of the Netherlands Indies".

In my opinion the appeal should be dismissed.

Willan, C. J. : — The plaintiff-respondent (hereinafter in this judgment referred to as "the respondent") issued a writ against the defendants-appellants (hereinafter in this judgment referred to as "the appellants") claiming delivery up of possession of certain property alleged to belong to the respondent, or damages in lieu.

The appellants applied by summons in chambers to set aside the writ on certain grounds, the two main grounds being :—

(a) The plaintiff "Netherlands Indies Government" does not exist.

(b) If it does exist it is not recognised as such by His Majesty's Government.

The application was dismissed in the Court below, and the appellants appealed to this Court against that decision.

At the hearing of this appeal Mr. Hatchard, Counsel for the appellants, directed his argument solely to the point that the Netherlands Indies Government is not a legal entity and therefore not competent to sue in the High Court of the Colony of Singapore. He submitted that if the Court is in doubt as to the status of a foreign sovereign that doubt can be resolved by reference to the proper officer of state — in this case the Special Commissioner, a foreign office representative stationed in Singapore. Reference to the Special Commissioner as to the status of the appellant produced the following reply, which was put in evidence :—

> "In reply to your letter of the 19th September (ref: KEWH/HE) I am directed by the Special Commissioner to inform you that His Majesty's Government continue as heretofore to recognise Dutch Sovereignty over the Netherlands East Indies.
>
> The Dutch Government in Batavia is normally referred to as the Government of the Netherlands East Indies.
>
> His Majesty's Government do not recognise any other Government in the territories concerned".

That reply is dated the 23rd of September, 1946.

Mr. Hatchard pointed out that that reply made no reference to the Netherlands Indies Government.

There is also in evidence a certificate of the Foreign Secretary which is in the following terms :—

> "I hereby certify that His Majesty's Government in the United Kingdom regard, and have since before September 1st 1939 continuously regarded, the sovereignty in the territory of the Netherlands East Indies as vested de jure in Her Majesty the Queen of the Netherlands".
>
> (Signed) ERNEST BEVIN.

"Foreign Office.
12th June, 1946.

Certified at the Colonial Office for legalization of the foregoing signature.

T. I. K. Lloyd.
Assistant Under Secretary
of State for the Colonies".

From this certificate Mr. Hatchard submitted that the suit should have been brought in the name of the Queen of the Netherlands.

Mr. Coltart, for the respondent, relied on the certificate of the Foreign Secretary that the respondent is the proper plaintiff, in that the Queen of the Netherlands, by the constitution, has authorised the establishment of the Netherlands Indies Government. As to this Mr. Coltart referred to the Netherlands Accountability Act (1864) which was enacted by the Legislature of the Kingdom of the Netherlands, and he relied on Article 1 of that Act, which reads as follows :—

"NETHERLANDS INDIES ACCOUNTABILITY ACT.
CHAPTER I.
SECTION I.
GENERAL STIPULATION.

Art 1. The Netherlands Indies are a legal entity (persona standi in judicio) and are represented either by the Governor General or by the Minister for the Colonies.

The properties, assets and liabilities of the Netherlands Indies are separated from those of the Netherlands.

The pecuniary resources of the Netherlands Indies are administered and accounted for according to the stipulation of this Act".

At the hearing of the application in the Court below to set aside the writ, no evidence, other than a copy of Article 1 of the said Accountability Act, was produced relating to the constitution of the Netherlands Indies, but in this Court Mr. Coltart applied for, and obtained on terms, an adjournment to put in such evidence. That evidence is contained in the affidavit of Gerard Witsen Elias, Doctor of Law of the University of Leyden, who has practised law in Sourabaya since 1924 and held the appointment of Acting Crown Solicitor there since 1937.

The essential parts of that affidavit are as follows :—

"

4. According to Article 1 of the Netherlands Constitution promulgated in the year 1815 which constitution has validity in the entire kingdom of the Netherlands this kingdom comprises the territories of the Netherlands, the Netherlands Indies, Surinamo and Curacao.

5. According to Article 62 of the said constitution the Supreme Power in the Netherlands Indies, Surinamo and Curacao is vested in the King (Queen) but in so far as special rights are not reserved to the King by constitution by law the General Administration is exercised in the Netherlands Indies in the name of the King (Queen) by the Governor General.

6. Article 25 of the Netherlands Indies Accountability Act, 1864, which Act is made in pursuance of the said constitution prescribes that the Governor General of the Netherlands Indies exercises the general administration of the finances and of the properties of the Netherlands.

. . . . . .

11. In the Netherlands Indies the Government is a juridical person and as such, representing the legal entity of the Netherlands Indies, may sue and can be sued.

12. In support of my statement in paragraph 11 the translation of two Netherlands Indies laws in so far as they deal with this poinr are as follows :—

a. Royal Proclamation of the 27th of April, 1922, Article 2.

'In civil lawsuits held before the Supreme Court of the Netherlands Indies and before the Courts of Justice in Java a lawyer admitted at these Courts will act for and on behalf of the Government of the Netherlands Indies as representing the Netherlands Indies'.

b. Code of Civil Procedure of the Netherlands Indies of the 29th of September, 1847, Article 6.

'Writs and legal documents will be served in the way as mentioned hereunder.

1. . . . . .

2. Regarding the Government of the Netherlands Indies as representing the Netherlands Indies on the Director of the Department concerned.

3. Etc. . . . . .

14. I am personally cognizant of a great many lawsuits held before the Supreme Court and the Courts of Justice in Java wherein the Netherlands Indies Government have sued or have been sued in its name as aforesaid and

I have in my capacity of Crown Solicitor conducted several of these cases. The use of any other name in such suits would be contrary to the law of the Netherlands Indies".

At the adjourned hearing of this appeal after the filing of that further evidence, Mr. Coltart submitted :—

(a) That there is no absolute rule of law that, as regards a monarchical foreign State, a suit can only be brought in the name of the sovereign of that State.

(b) That the Netherlands Indies Government derives its powers through the Queen of the Netherlands — a sovereign recognised by His Majesty's Government — and that by Article 1 of the Netherlands Accountability Act, 1864, and from the affidavit of Gerard Witsen Elias, it is clear that sufficient powers, particularly the power over the general administration of the properties of the Netherlands Indies (this suit deals with pursuing property claimed by the Government of the Netherlands Indies) have been delegated by the Queen of the Netherlands so as to make the Government of the Netherlands Indies the proper plaintiff in this suit.

(c) That from the affidavit of Gerard Witsen Elias there can be no fear that the appellants might be exposed to further proceedings at the instance of some other party.

From the Accountability Act and the affidavit of Gerard Witsen Elias there emerges :—

(1) That the Netherlands Indies is recognised by the constitution of 1815;

(2) That the same constitution vests the "general administration" (see paragraph 5 of the said affidavit) — the term "general administration" being merely an alternative expression for the word "government" — of the Netherlands Indies in the Governor General thereof, except as regards matters which are specially reserved to the Queen of the Netherlands;

(3) That by a specific provision of the Accountability Act, 1864, which was enacted by the Legislature of the Kingdom of the Netherlands, the Governor General exercises general administration of the properties of the Netherlands Indies;

(4) That the Netherlands Indies Government is a juristic person — see paragraph 11 of the affidavit of Gerard Witsen Elias.

In former times, when every State having a monarchical government was identified by its sovereign, suits in English Courts were always brought in the name of that sovereign. But with the creation of republics, a change was brought about by the decision in the case of the *United States of America v. Wagner*[3] in which it was held that although in the case of monarchical States the sovereign represents the person, property and interest of his State, yet, in the case of a republic, the person, property and interest are deemed to reside in the State itself, as a juristic person, and therefore that State can sue in its own name.

Then, in 1902 it was held in the case of *Yzquierdo v. Clydebank Engineering Company*[1] that there is no rule of English law that all suits in respect of the public property of a foreign State must be brought in the name of the sovereign. Such suits may be brought in the name of any other agent or body, so long as that agent or body has been duly authorised to represent the interests of the State with regard to the matter in question.

That was a case in contract, but in my view the same reasoning can be applied to an action in tort.

Accordingly on that reasoning I hold that in this suit the Netherland Indies Government is a juristic person and has been authorised to represent the interests of the Queen of the Netherlands with regard to property in the Netherlands Indies.

I am aware of the decision in the case of the *Columbian Government v. Rothschild*[2], in which the Vice-Chancellor decided that a foreign State :—

> "must sue in the names of some public officers who are entitled to represent the interests of the State,"

but would refer to the judgment of the Lord Chancellor in the *United States of America v. Wagner*, (supra), at page 589, where the passage in inverted commas is explained as follows :—

> The Vice-Chancellor, by the words, 'It must sue in the names of some public officers who are entitled to represent the interests of the State', must have referred to some persons or body in whom the interests of the State were vested, and who were, entitled to represent it in a suit.
>
> There was nothing upon the face of the bill to indicate whether the Government of Columbia was such a body, or indeed, of whom it was composed .....

In the present suit the doubts which arose in the Columbia case have been resolved to my satisfaction.

Finally it is clear from the affidavit of Gerard Witsen Elias that this suit brought by the Netherlands

Indies Government will keep the appellants safe against any subsequent demand by the Queen of the Netherlands, in the unlikely event of any such demand being made.

Accordingly I would dismiss this appeal with costs to the respondent.

Jobling, J. : —I regret to say that I take a different view of this matter from that taken by the other members of this Court and I must therefore deal with it at some length.

This is an appeal against the dismissal of the Appellants' (Defendants') application to set aside the writ issued in this matter and it has been contended for the Appellants that the Respondent is not competent to maintain this action because the Netherlands Indies Government is not a legal entity.

The record discloses that the Respondent is the Government established in the Netherlands Indies, which is also known as the Netherlands East Indies, and that His Majesty's Secretary of State for Foreign Affairs has certified that the United Kingdom Government recognises the sovereignty in the territory of the Netherlands East Indies as vested *de jure* in Her Majesty the Queen of the Netherlands.

But Mr. Coltart relied on the Netherlands Accountability Act 1867 and on certain averments in an affidavit by Gerard Witsen Elias, Doctor of Laws, which was admitted during the hearing of the appeal to show that the Netherlands Indies Government is a legal entity.

The Netherlands Indies Accountability Act was enacted by the Legislature of the Kingdom of the Netherlands in 1867 and a translation of Article 1 of the Act appears in the record as follows :—

> "Art 1. The Netherlands Indies are a legal entity (persona standi in judicio) and are represented either by the Governor General or by the Minister for the Colonies.
>
> The properties, assets and liabilities of the Netherlands Indies are separated from those of the Netherlands.
>
> The pecuniary resources of the Netherlands Indies are administered and accounted for according to the stipulations of this Act".

This Article declares the Netherlands Indies that is, the State of the Netherlands Indies, represented by the Governor General and the Minister for the Colonies, —to be a legal entity. But the Government of a State is quite distinct from the State itself and the Act does not create the Government a legal entity. The Accountability Act 1867 does not therefore in my view in any way affect the status of the Netherlands Indies Government.

The relevant paragraphs of the affidavit of Gerard Witsen Elias on which the Respondent relies are as follows :—

> "6. Article 25 of the Netherlands Indies Accountability Act 1864 which Act is made in pursuance of the said Constitution prescribes that the Governor General of the Netherlands Indies exercises the general administration of the finances and of the properties of the Netherlands Indies.
>
> 11. In the Netherlands Indies the Government is a juridical person and as such, representing the legal entity of the Netherlands Indies, may sue and can be sued.
>
> 12. In support of my statement in paragraph 11 the translation of two Netherlands Indies Laws in so far as they deal with this point are as follows :—
>
> a. Royal proclamation of the 27th of April 1922 article 2.
>
> "In civil lawsuits held before the Supreme "Court of the Netherlands Indies and "before the Courts of Justice in Java a "lawyer admitted at these courts will act "for and on behalf of the Government of "the Netherlands Indies as representing "the Netherlands Indies"
>
> b. Code of Civil Procedure of the Netherlands Indies of the 29th of September 1847 article 6.
>
> "Writs and legal documents will be "served in the way as mentioned here-"under.
>
> "1° .....
>
> "2° Regarding the Government of the Netherlands Indies as representing the Netherlands Indies on the Director of the Department concerned"
>
> "3° Etc .....
>
> 13. The lawyer mentioned in paragraph 12 (a) is the Crown Solicitor.
>
> 14. I am personally cognizant of a great many lawsuits held before the Supreme Court and the Courts of Justice in Java wherein the Netherlands Indies Government have sued or have been sued in its name as aforesaid and I have in my capacity of Crown Solicitor conducted several of these cases. The use of any other name in such suits would be contrary to the Law of the Netherlands Indies".

The only authority referred to on the question whether a government as such is capable of maintaining an action is *The Columbia Government v. Rothschild*[2]. The decision in this case is contained in a very short judgment and to understand its effect it is necessary to refer to the judgments delivered in the Court of Appeal in *United States of America v. Wagner*[3] In the latter case Lord Chelmsford L. C. in discussing the *Columbian Government v. Rothschild (supra)* said :—

> The Vice-Chancellor, by the words, "It must sue in the names of some public officers who are entitled to represent the interests of the state," must have referred to some persons or body in whom the interests of the state were vested, and who were, therefore, entitled to represent it in a suit.
>
> There was nothing upon the face of the bill to indicate whether the government of Columbia was such a body, or indeed, of whom it was composed, so that if the Defendants had been desirous of filing a cross bill, they would have been wholly unable, from information contained in the original bill, to know upon whom process should be served.

And Lord Cairns, L. J. referred to *Columbian Government v. Rothschild* as follows :—

> Dealing with the words before him, Sir John Leach appears to me to have held, and to have most properly held, that an unknown and undefined body, such as the government of a state, could not sue by that quasi-corporate name, and the expressions in his judgment seem to me to intimate no more than that if the persons so described could sue at all they must come forward as individuals, and shew that they were entitled to represent their state.

In another part of his judgment Lord Cairns said :—

> It is however in my opinion an error to suppose that the right of a Plaintiff to sue depends in any way on the effectiveness of the discovery which on a cross bill can be exacted from him. From an infant, a lunatic, a representative, trustee, or executor, wholly ignorant of the occurrences which are the subject of the suit, no practical discovery can be obtained, and yet they can maintain a suit. I apprehend that the only rule is, that the person, state, or corporation which has the interest must be the Plaintiff.

Their Lordships therefore appear to have taken the view that the *Columbian Government v. Rothschild* decided :—

1. That an unknown and undefined body such as a government of a state could not sue by that quasi-corporate name
2. That the right of a plaintiff to sue does not depend on the effectiveness of any cross claim against him, and
3. That the Plaintiff must be a person, State, or corporation which has the interest.

And it seems implicit in this view that the Plaintiff in order to have the interest must be a person state or corporation in which the interest can be legally vested, that is to say, a legal entity.

The affidavit of Jonkheer Elias avers :—

(a) That in the Netherlands Indies the Government is a juridical person and

(b) That suits by and against the Netherlands Indies Government in that name are in fact instituted and maintained in the Supreme Court and the Courts of Justice in Java. And that the use of any other name in such suits would be contrary to the Law of the Netherlands Indies.

But the affidavit goes on to set out the laws upon which these averments are based and I think this Court is entitled to assume that these are the only grounds on which they are made and is also entitled to examine the laws set out and to consider how far they do in fact support the averments.

The laws are contained in paragraph 12 of the affidavit, which I have already quoted above, from which it will be seen that Article 2 of the Royal Proclamation declares that a lawyer will act for the Government of the Netherlands Indies in civil law suits held before certain specified courts and article 6 of the Code of Civil Procedure declares that process in such suits will be served on the Director of the Department concerned.

These two declarations clearly do not affect the legal status of the body known as the Government of the Netherlands Indies or define it in any way. They merely make provision for facilitating the conduct of legal proceedings by and against the Government in specified courts. And the limiting of these facilities to suits instituted in certain courts only, is contrary to the assumption that the Government is a legal entity in the usually accepted sense.

Paragraph 14 of Jonkheer Elias' affidavit merely declares that suits by and against the Government are in fact instituted and maintained in the name of the Government of the Netherlands Indies and this fact does not create the Government a legal entity.

Further, as regards the last sentence in paragraph 14 of the affidavit, the question whether or not it would be contrary to the law of the Netherlands Indies for the Government to sue by any other name is not one that this Court is called upon to consider. A foreign plaintiff suing in this Court must comply with the law of this country. (See *Westlake* International Law 7th Edition page 273 and the case of the Soviet Government there mentioned).

The averments in paragraphs 11 and 14 of Jonkheer Elias's affidavit must therefore be read as declarations that the Netherlands Indies Government act as a juridical person in the Courts in the Netherlands Indies and not that it is in fact a juridical person.

As Lord Cairns said in the passage I have already quoted the right to sue does not depend on the

effectiveness of any cross action and therefore the mere fact that the Government would allow and always has allowed itself to be sued does not give it a right to sue.

The test, according to Lord Cairns, is whether the person state or corporation has the interest and in my opinion neither the laws quoted in paragraph 12 of the affidavit nor the fact that it acts as a juridical person create the Government a body in which interests may legally be vested and which may therefore sue and be sued in respect of those interests as a matter of legal right in the same manner as any individual or corporation.

The more recent case of *Yzquierdo v. Clydebank Engineering Company*[1] lays down the same test as Lord Cairns and in no way disturbs the principle in *Columbian Government v. Rothschild (supra)* as explained in *United States of America v. Wagner (supra)*. I think that principle should be followed and as I am of opinion for the reasons stated above that the Respondent is not a legal entity in which the interest can properly be vested I would allow the appeal and set the writ aside.

Appeal Dismissed.

SHER MOHAMED AND ANOTHER v. TELU RAM AND ANOTHER.

[App. Civil Juris. (Murray-Aynsley C.J., S.S., Pretheroe Ag. C.J., Malayan Union, Jobling J.) January 27, 1948]

Increase of Rent Restriction Ordinance. S. 8 — Relevant date at which rent must be in arrear to enable action for ejectment to be brought without permission of Rent Assessment Board — Whether payment by cheque is a good tender.

In this appeal two points of law were raised (1) What is the relevant date at which rent must be in arrear to bring the case out of the proviso in Section 8 of the Increase of Rent Restriction Ordinance and (2) Whether the payment of rent by cheque was a good tender.

Held, (1) following the decision in **Low Bee Hoe v. Morsalim**[1] that the relevant date at which the rent must be in arrear is the date of the summons; (2) in view of the fact that payment by cheque had previously been made and accepted and also in view of the fact that the appellants retained the cheque for nine days and only returned it immediately before the proceedings were instituted, that the appellants must be taken to have waived any objection to the mode of payment and that there was accordingly a good tender.

Case referred to:—

(1) *Low Bee Hoe v. Morsalim* (1946) M.L.J. 3.

CIVIL DISTRICT COURT APPEAL.

A. N. Mitra for the Appellant.

N. A. Mallal for the Respondent.

The judgment of the Court of Appeal was given by :—

Murray-Aynsley, C. J. : — In this case there were two points of law for determination. The first was, what is the relevant date at which rent must be in arrear to bring the case out of the proviso in section 8 of Increase of Rent [Restriction] Ordinance. We considered the judgment of Worley, J. in the case of *Low Bee Hoe v. Morsalim*[1]. We consider that it laid down the law correctly on this point and we have nothing to add.

The other point is, whether there was an effective tender of money due as rent before proceedings were instituted.

The facts were as follows :—

On February 24th the respondents sent a cheque for the amount due to the appellants. On March 5th the appellants' solicitors sent the following letter to the respondents, who lived in Seletar :—

> "Dear Sirs,
>
> Your letter of the 24th February 1947, enclosing a cheque for $40/- being the payment of the rent in arrears for the month of January and February 1947, has been placed in our hands with instructions to reply thereto.
>
> Our clients had already instructed us to take proceedings for ejectment. Your tenancy expired on the 31st Dec. 1946, by virtue of the notice to quit dated the 20th November 1946. From 1st January 1947, you became statutory tenants and you did not pay rent regularly and you have been in arrears of rent for Jan. and Feb. 1947. Moreover, you have tendered payment by cheque which is not a legal tender either.
>
> As you are in arrears already and our clients have instructed us to take proceedings, our clients do not accept this cheque which we return herewith.
>
> Yours faithfully
> sd. Menon and Mitra".

On March 7th proceedings were instituted.

Previously on January 6th the respondents' solicitors had written proposing to pay the rent by cheque and the appellants' solicitors had not objected; a cheque was sent and accepted.

In view of this and of the fact that the appellants retained the second cheque for nine days and only returned it immediately before proceedings were instituted we consider that the appellants had waived any objection to this mode of payment and that there was accordingly a good tender.

The appeal is accordingly dismissed.

Appeal Dismissed.